

1 LESLIE R. WEATHERHEAD, WSBA #11207  
J. CHRISTOPHER LYNCH, WSBA #17462

2 RHETT V. BARNEY, WSBA #44764  
LEE & HAYES, PLLC

3 601 W. Riverside Avenue, Suite 1400  
Spokane, WA 99201

4 Phone: (509) 324-9256

Fax: (509) 323-8979

5 Emails: [lesliew@leehayes.com](mailto:lesliew@leehayes.com)

[chris@leehayes.com](mailto:chris@leehayes.com)

6 [rhettb@leehayes.com](mailto:rhettb@leehayes.com)

7 *Counsel for Plaintiffs OTR Wheel Engineering, Inc.,*  
8 *Blackstone/OTR, LLC, and F. B. T. Enterprises, Inc.*

9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF WASHINGTON**

11 OTR WHEEL ENGINEERING, INC.,  
BLACKSTONE/OTR, LLC, and  
12 F. B. T. ENTERPRISES, INC.,

13 Plaintiffs,

14 vs.

15 WEST WORLDWIDE SERVICES,  
INC., and SAMUEL J. WEST,  
16 individually, and his marital  
community,

17 Defendants.

No.

COMPLAINT FOR REGISTERED  
TRADE DRESS INFRINGEMENT,  
UNFAIR COMPETITION, TRADE  
SECRET MISAPPROPRIATION,  
TORTIOUS INTERFERENCE WITH  
BUSINESS RELATIONS,  
DECEPTIVE TRADE PRACTICES,  
AND UNJUST ENRICHMENT

**With Demand for Jury Trial**

OTR Wheel Engineering, Inc.,<sup>1</sup> Blackstone/OTR, LLC, and F. B. T. Enterprises, Inc. (collectively, “OTR” or “Plaintiffs”), pursuant to 15 U.S.C. §§ 1114, 1116(d), and 1125(a); pursuant to R.C.W. § 19.86.090; pursuant to R.C.W. § 19.108.020; and pursuant to common law, bring this Complaint against Samuel J. West, individually, his marital community, and his company West Worldwide Services, Inc. (collectively “West” or “Defendants”), and respectfully state as follows:

### **INTRODUCTION**

OTR brings this suit against Defendants for counterfeiting and wrongfully infringing OTR’s federally registered *Outrigger* tire tread design and trademark (U.S. Trademark Registration No. 4,220,169, referred to herein as “the ‘169 Registration” or the “Trade Dress”). Camoplast Solideal (“Camoplast”), which is a 49% owner of Blackstone/OTR, LLC, licensed the use of OTR’s intellectual property and made arrangements with a Chinese company, Shandong Hawk Rubber Co. Ltd (“Superhawk”), allowing Superhawk to produce *Outrigger* tires for OTR. These tires would ultimately be sold by OTR to its customers who utilize OTR’s Trade Dress and tires on their vehicles, including one of its top clients, Genie Industries, a subsidiary of Terex Corporation (collectively “Genie”),

---

<sup>1</sup> OTR Wheel Engineering, Inc. was formerly known as Wheel and Rim Supply, Inc.

1 the maker of the famous Genie aerial work platforms (“AWPs”), or “lift vehicles.”  
2 Thereafter, Defendants, knowingly, improperly, and without OTR’s consent, used  
3 the intellectual property and tire tread designs that Superhawk had obtained  
4 through its arrangement with Camoplast, and Defendants arranged for the  
5 manufacture of counterfeit tires bearing OTR’s exact Trade Dress. Defendants  
6 then imported, promoted, distributed, and sold these counterfeit and infringing tires  
7 to buyers, including Genie, in the Eastern District of Washington. OTR therefore  
8 brings this action to (1) recover damages caused by Defendants’ unlawful  
9 counterfeiting and infringement on OTR’s Trade Dress; (2) enjoin Defendants  
10 from engaging in such unlawful counterfeiting and infringing conduct; and (3)  
11 recover or destroy any tires bearing OTR’s tire tread designs that Defendants still  
12 have in their possession.

### 13 **PARTIES, JURISDICTION AND VENUE**

14 1. Plaintiff OTR Wheel Engineering, Inc. (“OTR Wheel”) is a Georgia  
15 corporation that maintains its principal place of business at 6 Riverside Industrial  
16 Park, Rome, Georgia 30161. OTR Wheel is the designer of the *Outrigger* Trade  
17 Dress.

18 2. Plaintiff Blackstone/OTR, LLC (“Blackstone”) is a Georgia limited  
19 liability company that maintains its principal place of business at 6 Riverside  
20 Industrial Park, Rome, Georgia 30161. Blackstone is a licensee of the *Outrigger*

1 Trade Dress with rights to import and sell *Outrigger* tires in the United States and  
2 elsewhere. Blackstone also has a facility in Moses Lake, Washington.

3 3. Plaintiff F. B. T. Enterprises, Inc. ("F. B. T.") is a Georgia corporation  
4 that maintains its principal place of business at 6 Riverside Industrial Park, Rome,  
5 Georgia 30161. F. B. T. is the assignee of the intellectual property rights in the  
6 *Outrigger* Trade Dress from OTR Wheel, and F. B. T. is the licensor of intellectual  
7 property rights to Blackstone.

8 4. OTR Wheel, Blackstone, and F. B. T. work together in cooperation to  
9 design, protect, manufacture, import, market, and sell numerous wheel and tire  
10 products, including the *Outrigger* tire and its Trade Dress.

11 5. Defendant West Worldwide Services, Inc. ("West") is an Iowa  
12 corporation with a principal place of business at 26378 289<sup>th</sup> Place, Adel, Iowa  
13 50003, and a legal presence in this judicial district in Washington at 1020 N.  
14 Stratford Road and 151 S. Hamilton, Moses Lake, WA 98837. West imports, and  
15 likewise promotes, sells and distributes its counterfeit and infringing tires in and  
16 from this judicial district. West has a Washington State Registered Agent:  
17 Business Filings Incorporated, 505 Union Avenue SE, Suite 120, Olympia,  
18 Washington 98501.

19 6. Plaintiffs are informed and believe and therefore allege that Samuel J.  
20 West is a resident of Iowa, residing at 12747 Highway 61, Burlington, Iowa 52601.

1 On information and belief, Mr. West is the founder and president of West,  
2 responsible for the day-to-day decision-making of West, including all of those  
3 actions alleged herein to be unlawful and alleged to have occurred in and affected  
4 Plaintiffs' interests in Washington and this judicial district. On information and  
5 belief, West is operated as Samuel West's alter ego. If Mr. West is a married  
6 individual and is residing in Washington or any other community property state, or  
7 to the extent Mr. West has assets in Washington, all actions against Mr. West  
8 herein are alleged against him and his marital community, and all relief is sought  
9 from him and his marital community.

10 7. This civil action arises under the Lanham Act of the United States, 15  
11 U.S.C. § 1051 *et seq.* This Court has original subject matter jurisdiction over this  
12 action pursuant to 28 U.S.C. §§ 1331, 1338(a)-(b) and 15 U.S.C. § 1121, and the  
13 principles of supplemental jurisdiction, 28 U.S.C. § 1367. This Court also has  
14 original subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is  
15 diversity of citizenship between the parties and the amount in controversy exceeds  
16 the sum of \$75,000.00, exclusive of fees, interest and costs.

17 8. Jurisdiction is proper as to Defendant West Worldwide Services, Inc.  
18 because, *inter alia*, it maintains a registered agent and is authorized to and does  
19 transact business in the State of Washington.

9. Personal jurisdiction is proper as to Samuel West, who, on information and belief, directed the activities alleged against him in the State of Washington, including importation of the infringing tires into Washington and sales of the counterfeit and infringing tires in Washington and this judicial district, for delivery in Washington and this district.

10. Venue is proper in this district under 28 U.S.C. § 1391 because the Defendants transact business in this district, a substantial part of the events giving rise to Plaintiffs' claims arose in this district, and the effects of Defendants' unlawful actions are felt in this district where Plaintiffs compete with Defendants.

## FACTS

11. OTR manufactures and distributes wheels, tires, mounted tire/wheel assemblies, rubber tracks and cast products. Since as early as 1998, OTR has sold tires manufactured in accordance with its proprietary *Outrigger* designs and specifications.

12. OTR developed the *Outrigger* tire, including its design specifications, to accommodate the need and growing market for tires used on AWP's. The resulting *Outrigger* tire had a lower profile than other tires used on AWP's at the time, which made it cheaper and the flat tread face made it more stable for AWP's. In addition to a lower profile and flat tread face, OTR created, designed, and authored a distinctive trade dress for the *Outrigger* tire tread designs (the "Trade

1 Dress”). The improved tires and unique design came at substantial expense and  
 2 years of effort, but the *Outrigger* tire and its Trade Dress is now the leading tire in  
 3 the AWP industry.

4 13. The subject Trade Dress consists of an off-road tire tread design  
 5 having alternating interlaced lug bars. The lug bars are formed from the sidewalls  
 6 of the tire to the center bar of the tire at an angle from the tire sidewall, the angle  
 7 being between 35 and 45 degrees, and terminate towards the center bar of the tire  
 8 with a lug bar section that is substantially perpendicular to the sidewall of the tire  
 9 (as depicted below).



Image of *Outrigger* design on actual tire

Image from USPTO trade dress registration 4,220,169

14 14. OTR’s Trade Dress is arbitrary, unique and *de jure* non-functional.  
 15 The only function of the Trade Dress is to identify the source of the product as  
 16 OTR and its *Outrigger* design. The Trade Dress is inherently distinctive due to its  
 17 lug bars that are angled within a specific range and that terminate towards the  
 18 center bar of the tire with a lug bar section that is substantially perpendicular to the  
 19 sidewall of the tire. This distinctive Trade Dress is a source-identifier, signifying  
 20 OTR as a source of the tires to OTR’s customers, including Genie. The Trade

1 Dress is also a source-identifier signifying OTR as a source of the tires to Genie's  
2 customers, such as the property owners who buy such equipment, and the  
3 equipment retailers and rental shops that carry vehicles with the distinctive OTR  
4 Trade Dress. Although these tires are particularly robust, they are subject to wear  
5 and tear. As a result, the equipment owners, equipment retailers, and rental shops  
6 may need to replace the original *Outrigger* tires on their vehicles.

7 15. Since as early as 1998, OTR has continuously, extensively, and  
8 exclusively used its distinctive Trade Dress throughout the United States in  
9 interstate commerce. OTR has sold millions of dollars of its *Outrigger* tires  
10 bearing its distinctive Trade Dress and has expended thousands of dollars in  
11 advertising and promotion featuring the Trade Dress. The subject Trade Dress has  
12 achieved widespread acceptance and recognition among the consuming public and  
13 trade. As a result, OTR has developed and acquired valuable goodwill from its  
14 Trade Dress, including the ability of the tread design to identify OTR as the source  
15 of high quality tires.

16 16. OTR's Trade Dress has acquired distinctiveness and secondary  
17 meaning by reason of OTR's extensive advertising, promotion and sale of  
18 *Outrigger* tires bearing the Trade Dress.

19 17. On August 26, 1998, F. B. T. submitted a federal trademark  
20 application with the United States Patent and Trademark Office to register its

1 *Outrigger* word trademark (Application Serial No. 275,542,872, referred to as “the  
2 ‘872 Application”).

3 18. On October 26, 1999, the ‘872 Application was approved and OTR’s  
4 *Outrigger* word trademark was registered (Registration No. 2,288,934, referred to  
5 herein as “the ‘934 Registration”).

6 19. On January 3, 2011, F. B. T. submitted a federal trade dress  
7 application with the United States Patent and Trademark Office to register its  
8 Trade Dress (Application Serial No. 85,209,230, referred to herein as “the ‘230  
9 Application”).

10 20. On October 9, 2012, the ‘230 Application was approved, and OTR’s  
11 Trade Dress was registered (Registration No. 4,220,169, referred to herein as “the  
12 ‘169 Registration”).

13 21. The ‘934 Registration and its owner F. B. T. enjoy statutory  
14 presumptions including validity, ownership, and the exclusive right to use  
15 *Outrigger* in connection with the goods identified in the ‘934 Registration, namely,  
16 tires for construction, industrial, agricultural, and off-road vehicles. The ‘934  
17 Registration is incontestable pursuant to 15 U.S.C. § 1065.

18 22. The ‘169 Registration and its owner F. B. T. enjoy statutory  
19 presumptions of non-functionality, acquired distinctiveness, validity, ownership,  
20 and the exclusive right to use the Trade Dress in conjunction with the goods

1 identified in the '169 Registration, namely, off-road tires used with construction,  
2 industrial, and agricultural equipment.

3 23. A true and correct copy of the Registration Certificate for the  
4 *Outrigger* trademark (the '934 Registration) is attached hereto as Exhibit "A."

5 24. A true and correct copy of the Registration Certificate for the Trade  
6 Dress (the '169 Registration) is attached hereto as Exhibit "B."

7 25. Blackstone licenses the use of the *Outrigger* trademark and the Trade  
8 Dress from F. B. T., and such use inures to the benefit of F. B. T., owner of the  
9 '169 Registration. OTR Wheel designed the Trade Dress and assigned intellectual  
10 property rights in it to F. B. T. OTR Wheel, Blackstone and F. B. T. all benefit  
11 from the relationship of their companies regarding their exclusive use of the Trade  
12 Dress and the '934 and '169 Registrations.

### 13 **OPERATIVE FACTS**

14 26. In 2007, OTR and Camoplast were engaged in the manufacture and  
15 distribution of tires with OTR's *Outrigger* designs. Under OTR's arrangement  
16 with Camoplast, OTR licensed certain intellectual property to enable Camoplast to  
17 construct molds (the "Molds") used to manufacture the *Outrigger* tires. The  
18 relationship between OTR and Camoplast is subject to obligations of  
19 confidentiality with respect to OTR's confidential information and trade secrets in  
20 the Trade Dress and Molds ("Confidential Obligations"). OTR enjoys trade secrets

1 in these items because the information gives it an economic advantage because it is  
2 not generally known, not readily ascertainable by proper means, and which are the  
3 subject of reasonable efforts to maintain their secrecy.

4 27. Subject to the Confidentiality Obligations, Camoplast entered into an  
5 agreement for the manufacture of the *Outrigger* tires by Superhawk. To enable  
6 Superhawk to manufacture the *Outrigger* tires, under license, Camoplast provided  
7 Superhawk with certain intellectual property belonging to OTR, including the  
8 *Outrigger* tire design specifications as well as the Molds that it had constructed, all  
9 subject to its continuing Confidential Obligations.

10 28. Upon information and belief, sometime in 2012, Superhawk and the  
11 Defendants entered into an agreement, pursuant to which Superhawk agreed to  
12 manufacture tires for the Defendants. Upon information and belief, Defendants  
13 and Superhawk knowingly and willfully used OTR's trade secrets and other  
14 intellectual property rights including the '169 Registration, as well as  
15 misappropriated OTR's trade secrets by improper means including breach of  
16 obligations of confidentiality, to manufacture tires for the Defendants having the  
17 identical Trade Dress as the *Outrigger* tires (the "Infringing Tires"). Upon  
18 information and belief, after Camoplast demanded that Superhawk cease  
19 manufacturing the Infringing Tires, Superhawk subsequently moved production of  
20 the Infringing Tires to Shuma Tyre International Co. Ltd. ("Shuma"), a Chinese

1 company with which Plaintiffs believe Superhawk shares a common owner.  
2 Shuma and the Defendants use the brand name and trademark “Exmile” and  
3 “Stabimate” on the Infringing Tires they produce and import into the United States.  
4 On information and belief, Defendants have used OTR’s *Outrigger* trademark and  
5 the registered Trade Dress in its marketing and promotion of the Infringing Tires.

6 29. West has been importing, marketing, selling, and distributing these  
7 Infringing Tires to customers in the United States, including Genie. Genie is one  
8 of OTR’s top customers and has been a significant source of business for OTR  
9 over the years. OTR was supplying its *Outrigger* tires using the Trade Dress to  
10 Genie prior to the Defendants’ infringing conduct.

11 30. In October 2012, Sean McFadin, a Facility Manager at OTR’s plant  
12 facility in Moses Lake, Washington, saw and obtained photographs of the  
13 Infringing Tires on a third-party freight truck in this district. Upon information  
14 and belief, he learned that the tires were samples being delivered to Genie from the  
15 Defendants for testing.

16 31. Mr. McFadin observed that these tires had the exact same tread design  
17 and Trade Dress as the *Outrigger* tires. In addition, the tires bore the designation  
18 “355/55D625,” which is the same designation and stamped in the same manner—  
19 i.e., in the same location and using the same size lettering and font—as the  
20 designation on OTR’s *Outrigger* tires. In addition, the brand name “Extreme Lift

1 Stabimate” was stamped into the sidewall of the tire, in place of the “*Outrigger*”  
2 brand name, in the same location using the same size and font of lettering.

3 32. In April 2013, Scott Peck, another employee of OTR, saw and  
4 obtained photographs of the Infringing Tires on a Genie machine at a Terex facility  
5 in China. On information and belief, these Infringing Tires were bound for import  
6 to the United States.

7 33. Mr. Peck also observed that these tires had the exact same tread  
8 design and Trade Dress as the *Outrigger* tires. The Infringing Tires also bore the  
9 brand name “Exmile,” which was stamped in the same manner—i.e., in the same  
10 location and using the same size lettering and font—as OTR’s “*Outrigger*”  
11 designation on the *Outrigger* tires.

12 34. In January 2014, Owsley Cheek, an expert in the field of automotive  
13 computer-aided design comparison performed a “Geometric Analysis” of the  
14 Infringing Tires and found them to be “exact replicas” for purposes of visual  
15 comparison to the *Outrigger* Trade Dress.

16 35. In June 2013, Genie informed OTR that it would be cancelling orders  
17 of the *Outrigger* tires for two of its aerial lift machines effective July 1, 2013.  
18 Genie informed OTR that it would be switching to West’s Infringing Tires.

19 36. West has supplied approximately 1,000 of the Infringing Tires per  
20 month to Genie since September 1, 2013. OTR has learned that West has been

1 selling the Infringing Tires at a price that is at least thirty percent (30%) less than  
2 OTR's price on its *Outrigger* tires. OTR has suffered and will continue to suffer a  
3 substantial loss in revenue because of the Defendants' infringing conduct.

4 37. Notwithstanding OTR's well-established rights in and use of said  
5 Trade Dress, and after OTR's Trade Dress had acquired distinctiveness among the  
6 consuming public and trade, the Defendants have adopted and used in interstate  
7 commerce a tire tread design for its tire products that is substantially and  
8 confusingly similar to OTR's *Outrigger* design and Trade Dress.

9 38. Defendants' counterfeit tire tread design is substantially identical to  
10 and confusingly similar to OTR's Trade Dress. In fact, Genie has informed OTR  
11 that the tires being supplied by the Defendants are the same as OTR's tires.

12 39. Defendants' use of OTR's Trade Dress is likely to cause confusion,  
13 mistake and deception among the relevant consuming public and trade.  
14 Consumers will likely believe that Defendants' tires are in some way associated or  
15 connected with or approved by OTR, or that Defendants' products otherwise  
16 originate from the same source as do OTR's *Outrigger* tires.

17 40. Defendants' sale and distribution of tires containing the Trade Dress  
18 constitutes a deliberate, intentional attempt to trade and capitalize on the  
19 substantial goodwill of OTR's Trade Dress. Defendants' Infringing Tires are  
20

1 “counterfeit” for purposes of the Lanham Act definitions in 15 U.S.C. §§  
2 1116(d)(1)(B)(i) and 1127.

3 41. Defendants’ manufacture, importation, sales and distribution of tires  
4 containing the Trade Dress constitutes a deliberate, intentional misappropriation of  
5 OTR’s trade secrets in the Trade Dress and related information.

6 42. On information and belief, Defendants have imported the Infringing  
7 Tires into the Unites States in violation of certain anti-dumping regulations of the  
8 United States Customs and Border Patrol.

9 43. On information and belief, Defendants have imported the Infringing  
10 Tires into the Unites States in violation of certain registered trademark notification  
11 regulations of the United States Customs and Border Patrol.

12 44. In the spring of 2013, OTR informed Genie that OTR holds a Trade  
13 Dress registration on the *Outrigger* tire tread design and that the Defendants were  
14 infringing on OTR’s Trade Dress by selling the Infringing Tires to Genie.

15 45. In June 2013, representatives from Camoplast met with Michael  
16 Zhang from Superhawk and demanded that Superhawk discontinue the  
17 manufacture of the Infringing Tires for the Defendants.

18 46. Defendants had notice, or should have had notice, that their tires were  
19 infringing on OTR’s federally registered trademarks.

47. Despite these attempts to stop the Defendants' improper sale and distribution of the Infringing Tires, Defendants have continued to wrongfully procure manufacture, importation, marketing, sales and delivery of the Infringing Tires through its distribution of these tires to Genie and others.

48. As a result of Defendants' wrongful use of the *Outrigger* trademark and registered Trade Dress, OTR has suffered, and will continue to suffer, a substantial loss in revenue due to the lost business with Genie.

49. As of service of this Complaint, the Defendants are on notice that OTR is the rightful owner of the *Outrigger* trademark and Trade Dress and that the Defendants should cease and desist from manufacturing, selling, and distributing the Infringing Tires.

**COUNT I**  
**FEDERAL TRADEMARK COUNTERFEITING AND INFRINGEMENT**  
**(15 U.S.C. §§ 1114, 1116(d), and 1125(a))**

50. OTR incorporates and realleges, as if fully set forth herein, the allegations contained in the foregoing paragraphs of this Complaint.

51. OTR created, authored and employed the *Outrigger* trademark for its designs and tires. *Outrigger* is a federally registered mark. F. B. T. owns the U.S. Trademark Registration for *Outrigger*, Registration No. 2,288,934, issued by the United States Patent and Trademark Office and licensed to OTR.

1           52. OTR created, designed and authored the distinctive Trade Dress for  
2 the tire tread of its *Outrigger* designs and tires. The Trade Dress is a federally  
3 registered mark. F. B. T. owns the U.S. Trademark Registration for the Trade  
4 Dress, Registration No. 4,220,169, issued by the United States Patent and  
5 Trademark Office on October 9, 2012 and licensed to OTR.

6           53. OTR's Trade Dress is arbitrary, unique and non-functional and is  
7 inherently distinctive due to its lug bars that are angled within a specific range  
8 (namely, 35 to 45 degrees from the tire's sidewall to the center bar) and that  
9 terminate towards the center bar of the tire with a lug bar section that is  
10 substantially perpendicular to the sidewall of the tire.

11           54. There exist a number of options available to competitors in the design  
12 of tire treads, including in particular, alternative off-road tire designs having  
13 directional, self-cleaning tread.

14           55. Defendants' importation, marketing, distribution and/or sale of tires  
15 bearing the Trade Dress tread or bearing a tire tread closely simulating OTR's  
16 Trade Dress, constitutes a false designation of origin which is causing or is likely  
17 to cause confusion, mistake or deception as to origin, sponsorship or approval of  
18 Defendants' products, in violation of the Lanham Act, 15 U.S.C. §§ 1114 and  
19 1125(a). Defendants' use of the counterfeit tread design also gives Plaintiffs  
20 injunctive, statutory damage and attorneys' fees rights under 15 U.S.C. § 1116(d).

1           56. Defendants' distribution and/or sale of tires using the *Outrigger*  
2 trademark constitutes a false designation of origin which is causing or is likely to  
3 cause confusion, mistake or deception as to origin, sponsorship or approval of  
4 Defendants' products, in violation of the Lanham Act, 15 U.S.C. §§ 1114 and  
5 1125(a).

6           57. Defendants' complained-of acts have damaged OTR and unless  
7 restrained will continue to damage OTR, including lost profits and irreparable  
8 injury to OTR's reputation and goodwill. OTR has no adequate remedy at law.

9           58. Defendants' actions, particularly their sale and distribution of tires  
10 containing OTR's Trade Dress, when it has received notice of OTR's Trade Dress  
11 registration, demonstrate an intentional, willful, malicious, and bad faith intent to  
12 trade on the goodwill associated with OTR resulting in irreparable injury to OTR.

13           59. Defendants' conduct is causing and is likely to cause substantial  
14 injury to the public and to OTR, and OTR is entitled to injunctive relief and to  
15 recover Defendants' profits, three times OTR's actual damages, costs, and  
16 reasonable attorneys' fees pursuant to 15 U.S.C. §§ 1114, 1116(a), 1117(a), and  
17 1125(a).

**COUNT II**  
**WASHINGTON CONSUMER PROTECTION ACT**  
**(R.C.W.A. § 19.86.020 et seq.)**

60. OTR incorporates and realleges, as if fully set forth herein, the allegations contained in the foregoing paragraphs of this Complaint.

61. Defendants have engaged in unfair and deceptive practices within the meaning of the Washington Consumer Protection Act, R.C.W.A. § 19.86.020 *et seq.*, by passing off its tires as those of OTR or approved by OTR and by its trade dress use and infringement. This conduct is continual and continues to this date.

62. Defendants' unlawful actions affect the public interest because by using OTR's Trade Dress on its tire, Defendants have caused a likelihood of confusion or misunderstanding as to the source, origin, or sponsorship of the parties' respective products.

63. Defendants' unlawful actions also affect the public interest by causing a likelihood of confusion or misunderstanding as to the affiliation, connection or association of Defendants with OTR.

64. Defendants' unlawful conduct relating to OTR's *Outrigger* designs and Trade Dress is causing and is likely to cause substantial injury to the purchasing public and trade and to OTR, was conducted in trade and commerce, and has the potential for repetition.



1 importation, sale and distribution of the Infringing Tires. This misappropriation is  
2 in violation of Washington's Uniform Trade Secret Act, R.C.W. § 19.108.010 *et*  
3 *seq.*

4 70. As a direct result of Defendants' misappropriation of OTR's trade  
5 secrets, OTR has been injured in its business and property. Its trade secrets have  
6 been compromised and used without its permission and Defendants have profited  
7 from this misappropriation.

8 71. Defendants' unlawful conduct has irreparably damaged OTR in its  
9 business and property and will continue to damage OTR unless restrained by this  
10 Court. OTR is without an adequate remedy at law. Pursuant to R.C.W.A. §  
11 19.108.020, OTR is entitled to injunctive relief.

12 **COUNT IV**  
13 **TORTIOUS INTERFERENCE WITH BUSINESS EXPECTANCY**

14 72. OTR incorporates and realleges, as if fully set forth herein, the  
15 allegations contained in the foregoing paragraphs of this Complaint.

16 73. OTR has a valid business expectancy in supplying its *Outrigger* tires  
17 to Genie. Genie has been a longstanding customer of OTR and had been  
18 purchasing *Outrigger* tires from OTR prior to the Defendants' infringing conduct.

19 74. Upon information and belief, Defendants had knowledge of the  
20 relationship between OTR and Genie.

1        75. Without business justification, Defendants intentionally interfered  
2 with OTR's business expectancy by supplying Genie with the Infringing Tires at a  
3 significantly lower cost than that of OTR's *Outrigger* Tires.

4        76. Defendants interfered with OTR's business expectancy by the  
5 improper means of supplying to Genie tires bearing an identical trade dress to  
6 OTR's *Outrigger* tire tread designs.

7        77. As a direct result of Defendants' sale of tires having OTR's tire tread  
8 designs and selling them at a lower cost, Genie chose to buy the Infringing Tires,  
9 which it perceived as being the same as OTR's tires, rather than buying *Outrigger*  
10 tires from OTR. This has resulted in a significant loss of revenue to OTR.

11                                    **COUNT V**  
12                                    **UNJUST ENRICHMENT**

13        78. OTR incorporates and realleges, as if fully set forth herein, the  
14 allegations contained in the foregoing paragraphs of this Complaint.

15        79. Upon information and belief, Defendants have received benefits from  
16 its use of OTR's proprietary and unique *Outrigger* mark and tire design.

17        80. The benefits of the improper use of OTR's *Outrigger* mark and design  
18 must be returned to OTR, or OTR ought to be compensated for the benefits  
19 conferred on Defendants.  
20

1 81. It is against equity for Defendants to retain the benefits of the  
2 *Outrigger* tire design and to profit by its use without compensating OTR.

3 82. OTR is entitled to damages in an amount to be proven at trial to  
4 prevent Defendants from being unjustly enriched.

5 **COUNT VI**  
6 **PRELIMINARY INJUNCTION**

7 83. OTR incorporates and realleges, as if fully set forth herein, the  
8 allegations contained in the foregoing paragraphs of this Complaint.

9 84. Despite learning that OTR is the rightful owner of the *Outrigger*  
10 trademark and Trade Dress, Defendants continue to sell and distribute the  
11 Infringing Tires in violation of OTR's rights.

12 85. Because OTR is the rightful registered owner of the *Outrigger*  
13 trademark and Trade Dress, there is a substantial likelihood that OTR will prevail  
14 on the merits of its claims.

15 86. Defendants' current and continuing use of OTR's *Outrigger* mark and  
16 designs is an immediate and irreparable injury to OTR and its business reputation  
17 and goodwill.

18 87. As described more fully in the Motion for Preliminary Injunctive  
19 Relief filed contemporaneously with this Complaint, OTR is entitled to a  
20

1 preliminary injunction enjoining Defendants from procuring the manufacture of,  
2 selling, and distributing, the Infringing Tires.

3 88. Defendants' acts in continuing to sell and distribute the Infringing  
4 tires after notice of OTR's registered *Outrigger* trademark and Trade Dress is  
5 contrary to equity and good conscience.

6 89. OTR has no adequate remedy at law during the pendency of this case  
7 for the infringement of its proprietary and unique *Outrigger* mark and design.

8 90. The harm to OTR outweighs any potential harm a preliminary  
9 injunction would do to the Defendants.

10 91. The public interest in preventing consumer confusion caused by  
11 Defendants' use of the *Outrigger* mark and design favors enjoining Defendants  
12 from producing tires using OTR's designs during the pendency of this case.

13 92. OTR is entitled to a preliminary injunction requiring Defendants to  
14 cease using the *Outrigger* mark and Trade Dress during this case to prevent further  
15 violations of OTR's ownership of and rights in the Trade Dress.

16 **COUNT VII**  
17 **PERMANENT INJUNCTION**

18 93. OTR incorporates and realleges, as if fully set forth herein, the  
19 allegations contained in the foregoing paragraphs of this Complaint.

1           94. For the reasons stated above, OTR is entitled, after a hearing and upon  
2 final decree, to a permanent injunction requiring Defendants to cease all sale and  
3 distribution of the Infringing Tires and refrain from making any further use of the  
4 *Outrigger* mark and designs to manufacture tires in competition with OTR or for  
5 any other purpose

6           **WHEREFORE, OTR prays that the Court:**

7           A. Provide OTR a trial by jury;

8           B. Grant OTR a temporary restraining order and preliminary injunction  
9 enjoining Defendants from selling or otherwise distributing tires bearing a similar  
10 trade dress to the *Outrigger* Trade Dress, a similar trademark to *Outrigger*, or to  
11 copy or record proprietary information about the *Outrigger* designs to the extent  
12 Defendants has access to that information;

13           C. Grant OTR a permanent injunction enjoining Defendants from selling  
14 or otherwise distributing tires bearing a substantially similar tire tread design to the  
15 *Outrigger* Trade Dress, bearing a mark substantially similar to *Outrigger*, or to use,  
16 copy or record proprietary information about the *Outrigger* designs;

17           D. Require Defendants to deliver to OTR or to an officer of the Court  
18 any colorable imitations of the *Outrigger* tire in Defendants' possession;

19           E. Grant preliminary and permanent injunction enjoining Defendants and  
20 its officers, agents, servants, employees, attorneys and those persons, firms or

1 corporations, acting in concert and participation with them from any importation,  
2 manufacture, assembly, advertisement, promotion, offer for sale, sale, purchase,  
3 distribution, movement or transfer of, or any other involvement with tire products  
4 bearing OTR's *Outrigger* mark or Trade Dress, or any other colorable imitation of  
5 OTR's distinctive *Outrigger* mark or Trade Dress on or in connection with tire  
6 products;

7 F. Enter judgment in favor of OTR and against Defendants for lost  
8 profits and lost revenues;

9 G. Award OTR damages, including exemplary and treble damages;

10 H. Award OTR attorneys' fees in such other amounts as may be proven  
11 at trial or as otherwise provided by law;

12 I. Award OTR post-judgment interest; and

13 J. Grant such other and further relief as this Court deems just and  
14 proper.

1 Respectfully submitted this 2<sup>nd</sup> day of April, 2014.

2  
3 By: s/ Leslie R. Weatherhead

4 Leslie R. Weatherhead, WSBA #11207

5 J. Christopher Lynch, WSBA #17462

6 Rhett V. Barney, WSBA #44764

7 Counsel for Plaintiffs OTR Wheel

8 Engineering, Inc., Blackstone/OTR, LLC,

9 and F. B. T. Enterprises, Inc.

10 Lee & Hayes, PLLC

11 601 W. Riverside Avenue, Suite 1400

12 Spokane, WA 99201

13 Phone: (509) 324-9256

14 Fax: (509) 323-8979

15 Emails: [lesliew@leehayes.com](mailto:lesliew@leehayes.com)

16 [chris@leehayes.com](mailto:chris@leehayes.com)

17 [rhetb@leehayes.com](mailto:rhetb@leehayes.com)